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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

KONSTANTINOS
MOSHOGIANNIS, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

USPROTECT CORPORATION,
and DOE ONE through and
including DOE ONE-HUNDRED,

Defendants.

Case No: C 07-5128 CRB

FIRST AMENDED COMPLAINT
[Class-Action Complaint]

1. Cal. Lab. Code §§ 510 and 1194,
Failure to Pay Overtime

2. Cal. Lab. Code § 203, Continuing
Wages

3. Cal. Lab. Code § 226, Failure to
Provide Accurate Pay Stubs

4. Cal. Lab. Code § 226.7, Failure to
Provide Rest and Meal Breaks

5. Cal. Bus. & Prof. Code § 17200 *et seq.*

6. Fair Labor Standards Act, 29 U.S.C. §
206, Minimum Wage

7. Fair Labor Standards Act, 29 U.S.C. §
207, Overtime

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Konstantinos Moshogiannis, and for his causes of action against Defendant USPROTECT CORPORATION, alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Konstantinos Moshogiannis (“Plaintiff” or “Moshogiannis”) is an individual who, during the time periods relevant to this Complaint, was employed by the San Francisco Division of Defendant USPROTECT CORPORATION, within the State of California.

2. Defendant USPROTECT CORPORATION (“USPROTECT”) is a business organization incorporated in the State of Maryland and authorized to do business in the State of California and doing business at 50 United Nations Plaza, San Francisco, California 94102. USPROTECT provides security consulting, physical security and guard force protection services to numerous clients throughout many counties in California.

3. Defendants DOE ONE through and including DOE ONE-HUNDRED are sued herein under the provisions of section 474 of the California Code of Civil Procedure. Plaintiff is unaware of the true names, identities, and capacities, whether individual, corporate, or otherwise, of the said fictitiously named Defendants, but leave of Court will be prayed to amend this Complaint to insert the same herein when finally ascertained. Plaintiff is informed, believes, and thereon alleges that each of the said fictitiously named Defendants is legally responsible for the acts, omissions, and damages hereinafter alleged.

GENERAL ALLEGATIONS

4. Defendant employed Moshogiannis to perform security-guard functions from at least November 2001 through on or about June 29, 2007, when Plaintiff was discharged.

5. At all relevant times mentioned herein, the relevant portion of section 201(a) of the California Labor Code provided: “If an employer discharges an employee, the

1 wages earned and unpaid at the time of discharge are due and payable immediately,”
2 while section 202 of the California Labor Code provides for payment within 72 hours of
3 employees who quit.

4 6. At all relevant times mentioned herein, section 510 of the California Labor
5 Code provided, in relevant part:

6 (a) Eight hours of labor constitutes a day's work. Any work in excess of
7 eight hours in one workday and any work in excess of 40 hours in any one
8 workweek and the first eight hours worked on the seventh day of work in
9 any one workweek shall be compensated at the rate of no less than one and
10 one-half times the regular rate of pay for an employee. Any work in excess
11 of 12 hours in one day shall be compensated at the rate of no less than twice
12 the regular rate of pay for an employee. In addition, any work in excess of
13 eight hours on any seventh day of a workweek shall be compensated at the
14 rate of no less than twice the regular rate of pay of an employee. Nothing in
15 this section requires an employer to combine more than one rate of overtime
16 compensation in order to calculate the amount to be paid to an employee for
17 any hour of overtime work. The requirements of this section do not apply to
18 the payment of overtime compensation to an employee working pursuant to
19 any of the following:

20 (1) An alternative workweek schedule adopted pursuant to Section 511.

21 (2) An alternative workweek schedule adopted pursuant to a collective
22 bargaining agreement pursuant to Section 514.

23 7. At all relevant times mentioned herein, section 1194 of the California Labor
24 Code provided, in relevant part:

25 (a) Notwithstanding any agreement to work for a lesser wage, any employee
26 receiving less than the legal minimum wage or the legal overtime compensation
27 applicable to the employee is entitled to recover in a civil action the unpaid balance
28 of the full amount of this minimum wage or overtime compensation, including

1 interest thereon, reasonable attorney's fees, and costs of suit.

2 8. With regard to the employment of Plaintiff as described above, the
3 provisions of subparagraphs (1) and (2) of section 510 of the California Labor Code were
4 inapplicable in that no alternative workweek schedule had been adopted pursuant to
5 section 510 and Plaintiff's employment was not governed by a collective bargaining
6 agreement as described in section 514 of the California Labor Code.

7 9. During his employment with Defendant, Defendant failed to provide
8 Plaintiff with overtime compensation as required by the California Labor Code and/or
9 Industrial Welfare Commission Order No. 4-2001 ("Wage Order 4"). Plaintiff regularly
10 labored in excess of eight (8) hours per workday but was not paid overtime for such labor
11 in contravention of section 514 of the California Labor Code and Wage Order 4.

12 10. To date, Plaintiff has not received all of his earned wages.

13 11. At all relevant times mentioned herein, section 203 of the California Labor
14 Code provided:

15 If an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall
18 continue as a penalty from the due date thereof at the same rate until paid or
19 until action therefore is commenced; but the wages shall not continue for
20 more than 30 days.

21 12. At all relevant times mentioned herein, section 204 of the California Labor
22 Code provided, in relevant part:

23 (a) All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2,
24 earned by any person in any employment are due and payable twice during each
25 calendar month, on days designated in advance by the employer as the regular
26 paydays. Labor performed between the 1st and 15th days, inclusive, of any
27 calendar month shall be paid for between the 16th and the 26th day of the month
28 during which the labor was performed, and labor performed between the 16th and

1 the last day, inclusive, of any calendar month, shall be paid for between the 1st and
2 10th day of the following month.

3 13. Defendant's failure to pay Plaintiff within the time provided by section 201
4 of the California Labor Code has been and is "willful" within the meaning of section 203
5 of the California Labor Code and, accordingly, he is entitled to the "continuing wages"
6 provided by section 203.

7 14. At all relevant times mentioned herein, section 208 of the California Labor
8 Code provided:

9 Every employee who is discharged shall be paid at the place of discharge,
10 and every employee who quits shall be paid at the office or agency of the
11 employer in the county where the employee has been performing labor. All
12 payments shall be made in the manner provided by law.

13 15. At all relevant times mentioned herein, section 226 of the California Labor
14 Code provided:

15 (a) Every employer shall, semimonthly or at the time of each payment of
16 wages, furnish each of his or her employees, either as a detachable part of
17 the check, draft, or voucher paying the employee's wages, or separately
18 when wages are paid by personal check or cash, an itemized statement in
19 writing showing (1) gross wages earned, (2) total hours worked by the
20 employee, except for any employee whose compensation is solely based on a
21 salary and who is exempt from payment of overtime under subdivision (a) of
22 Section 515 or any applicable order of the Industrial Welfare Commission,
23 (3) the number of piece-rate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis, (4) all deductions, provided, that all
25 deductions made on written orders of the employee may be aggregated and
26 shown as one item, (5) net wages earned, (6) the inclusive dates of the period
27 for which the employee is paid, (7) the name of the employee and his or her
28 social security number, (8) the name and address of the legal entity that is

1 the employer, and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by
3 the employee. The deductions made from payments of wages shall be
4 recorded in ink or other indelible form, properly dated, showing the month,
5 day, and year, and a copy of the statement or a record of the deductions shall
6 be kept on file by the employer for at least three years at the place of
7 employment or at a central location within the State of California.

8

9 (e) An employee suffering injury as a result of a knowing and intentional
10 failure by an employer to comply with subdivision (a) is entitled to recover
11 the greater of all actual damages or fifty dollars (\$50) for the initial pay
12 period in which a violation occurs and one hundred dollars (\$100) per
13 employee for each violation in a subsequent pay period, not exceeding an
14 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
15 award of costs and reasonable attorney's fees.

16 16. Throughout the period of Plaintiff's employment with Defendant, Defendant
17 failed to provide him with the data required by section 226 of the California Labor Code.
18 For example, Exhibit 1 is Plaintiff's pay stub for the period ending September 3, 2006.
19 This pay stub fails to detail gross wages earned, total hours worked by the employee, net
20 wages earned, or all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the employee.

22 17. At all relevant times mentioned herein, section 512(a) of the California
23 Labor Code provided:

24 An employer may not employ an employee for a work period of more than
25 five hours per day without providing the employee with a meal period of not
26 less than 30 minutes, except that if the total work period per day of the
27 employee is no more than six hours, the meal period may be waived by
28 mutual consent of both the employer and employee. An employer may not

1 employ an employee for a work period of more than 10 hours per day
2 without providing the employee with a second meal period of not less than
3 30 minutes, except that if the total hours worked is no more than 12 hours,
4 the second meal period may be waived by mutual consent of the employer
5 and the employee only if the first meal period was not waived.

6 18. At all relevant times mentioned herein, section 226.7(b) of the California
7 Labor Code provided:

8 If an employer fails to provide an employee a meal period or rest period in
9 accordance with an applicable order of the Industrial Welfare Commission,
10 the employer shall pay the employee one additional hour of pay at the
11 employee's regular rate of compensation for each work day that the meal or
12 rest period is not provided.

13 19. Defendant regularly failed to provide Plaintiff with rest periods and
14 meal periods during his periods of employment as required by sections 226.7 and
15 512 of the California Labor Code. Defendant also regularly failed to provide
16 Plaintiff with compensation for time spent traveling between two separate work
17 locations on a single workday, requiring he commence work at one location and
18 complete work at a separate location. 29 C.F.R. § 785.38.

19 20. At all times relevant herein, Wage Order 4 provided, in relevant part:

20 3. HOURS AND DAYS OF WORK

21 (A) Daily Overtime - General Provisions

22 (1) The following overtime provisions are applicable to employees 18 years
23 of age or over and to employees 16 or 17 years of age who are not required
24 by law to attend school and are not otherwise prohibited by law from
25 engaging in the subject work. Such employees shall not be employed more
26 than eight (8) hours in any workday or more than 40 hours in any workweek
27 unless the employee receives one and one-half (1 1/2) times such employee's
28 regular rate of pay for all hours worked over 40 hours in the workweek.

1 Eight (8) hours of labor constitutes a day's work. Employment beyond eight
2 (8) hours in any workday or more than six (6) days in any workweek is
3 permissible provided the employee is compensated for such overtime at not
4 less than:

5 (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
6 hours worked in excess of eight (8) hours up to and including 12 hours in
7 any workday, and for the first eight (8) hours worked on the seventh (7th)
8 consecutive day of work in a workweek; and

9 (b) Double the employee's regular rate of pay for all hours worked in excess
10 of 12 hours in any workday and for all hours worked in excess of eight (8)
11 hours on the seventh (7th) consecutive day of work in a workweek.

12

13 4. MINIMUM WAGES

14 (B) Every employer shall pay to each employee, on the established payday
15 for the period involved, not less than the applicable minimum wage for all
16 hours worked in the payroll period, whether the remuneration is measured
17 by time, piece, commission, or otherwise.

18

19 7. RECORDS

20 (A) Every employer shall keep accurate information with respect to each
21 employee including the following:

22 (1) Full name, home address, occupation and social security number.

23 (2) Birth date, if under 18 years, and designation as a minor.

24 (3) Time records showing when the employee begins and ends each work
25 period. Meal periods, split shift intervals and total daily hours worked shall
26 also be recorded. Meal periods during which operations cease and authorized
27 rest periods need not be recorded.
28

1 (4) Total wages paid each payroll period, including value of board, lodging,
2 or other compensation actually furnished to the employee.

3 (5) Total hours worked in the payroll period and applicable rates of pay.

4 This information shall be made readily available to the employee upon
5 reasonable request.

6 (6) When a piece rate or incentive plan is in operation, piece rates or an
7 explanation of the incentive plan formula shall be provided to employees.

8 An accurate production record shall be maintained by the employer.

9 (B) Every employer shall semimonthly or at the time of each payment of
10 wages furnish each employee, either as a detachable part of the check, draft,
11 or voucher paying the employee's wages, or separately, an itemized
12 statement in writing showing: (1) all deductions; (2) the inclusive dates of
13 the period for which the employee is paid; (3) the name of the employee or
14 the employee's social security number; and (4) the name of the employer,
15 provided all deductions made on written orders of the employee may be
16 aggregated and shown as one item.

17

18 11. MEAL PERIODS

19 (A) No employer shall employ any person for a work period of more than
20 five (5) hours without a meal period of not less than 30 minutes, except that
21 when a work period of not more than six (6) hours will complete the day's
22 work the meal period may be waived by mutual consent of the employer and
23 the employee. Unless the employee is relieved of all duty during a 30 minute
24 meal period, the meal period shall be considered an "on duty" meal period
25 and counted as time worked. An "on duty" meal period shall be permitted
26 only when the nature of the work prevents an employee from being relieved
27 of all duty and when by written agreement between the parties an on-the-job
28

1 paid meal period is agreed to. The written agreement shall state that the
2 employee may, in writing, revoke the agreement at any time.

3 (B) If an employer fails to provide an employee a meal period in accordance
4 with the applicable provisions of this order, the employer shall pay the
5 employee one (1) hour of pay at the employee's regular rate of compensation
6 for each workday that the meal period is not provided.

7

8 12. REST PERIODS

9 (A) Every employer shall authorize and permit all employees to take rest
10 periods, which insofar as practicable shall be in the middle of each work
11 period. The authorized rest period time shall be based on the total hours
12 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
13 or major fraction thereof. However, a rest period need not be authorized for
14 employees whose total daily work time is less than three and one-half (3 1/2)
15 hours. Authorized rest period time shall be counted as hours worked for
16 which there shall be no deduction from wages.

17 (B) If an employer fails to provide an employee a rest period in accordance
18 with the applicable provisions of this order, the employer shall pay the
19 employee one (1) hour of pay at the employee's regular rate of compensation
20 for each workday that the rest period is not provided.

21 21. Section 2699 of the California Labor Code, the Labor Code Private
22 Attorneys General Act of 2004, provides in subpart (a) and subparts (f) through (g):

23 (a) Notwithstanding any other provision of law, any provision of this code
24 that provides for a civil penalty to be assessed and collected by the Labor
25 and Workforce Development Agency or any of its departments, divisions,
26 boards, agencies or employees, for a violation of this code, may, as an
27 alternative, be recovered through a civil action brought by an aggrieved
28 employee on behalf of himself or herself and other current or former

employees.

. . . .

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

. . . .

(g) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

22. Pursuant to section 2699 of the California Labor Code, Plaintiff contends that he is entitled to recover civil penalties on behalf of himself and other former or current aggrieved employees for Defendant's violations of the California Labor Code.

23. At all times relevant herein, section 210 of the California Labor Code provided, in relevant part:

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:

1 (a) For any initial violation, one hundred dollars (\$100) for each failure to
2 pay each employee.

3 (b) For each subsequent violation, or any willful or intentional violation,
4 two hundred dollars (\$200) for each failure to pay each employee, plus 25
5 percent of the amount unlawfully withheld.

6 24. At all times relevant herein, section 226.3 of the California Labor Code
7 provided, in relevant part:

8 Any employer who violates subdivision (a) of Section 226 shall be subject
9 to a civil penalty in the amount of two hundred fifty dollars (\$ 250) per
10 employee per violation in an initial citation and one thousand dollars (\$
11 1,000) per employee for each violation in a subsequent citation, for which
12 the employer fails to provide the employee a wage deduction statement or
13 fails to keep the records required in subdivision (a) of Section 226. The
14 civil penalties provided for in this section are in addition to any other
15 penalty provided by law.

16 25. At all times relevant herein, section 558 of the California Labor Code
17 provided, in relevant part:

18 (a) Any employer or other person acting on behalf of an employer who
19 violates, or causes to be violated, a section of this chapter or any provision
20 regulating hours and days of work in any order of the Industrial Welfare
21 Commission shall be subject to a civil penalty as follows: (1) For any initial
22 violation, fifty dollars (\$50) for each underpaid employee for each pay
23 period for which the employee was underpaid in addition to an amount
24 sufficient to recover underpaid wages. (2) For each subsequent violation,
25 one hundred dollars (\$100) for each underpaid employee for each pay period
26 for which the employee was underpaid in addition to an amount sufficient to
27 recover underpaid wages. (3) Wages recovered pursuant to this section shall
28 be paid to the affected employee.

26. At all times relevant herein, section 1197.1 of the California Labor Code provided, in relevant part:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

CLASS-ACTION ALLEGATIONS

21. The class represented by Plaintiff (hereafter referred to as the “Class”) consists of all natural persons who were tendered paychecks by Defendant in the United States during the period beginning four years prior to the filing of this Complaint (such persons are referred to hereafter as “Class Members,” and such period is referred to hereafter as the “Class Period”).

22. Defendant’s failure to pay overtime, as required by section 510, entitles Plaintiff and each Class Member to their unpaid overtime wages and interest in accordance with section 1194 of the California Labor Code.

23. Defendant’s failure to make payments within the time provided by sections 201 or 202 of the California Labor Code has been and is “willful” within the meaning of section 203 of the California Labor Code and that, accordingly, Plaintiff and each Class Member who quit or was discharged and was not paid in accordance with the law is entitled to the continuing wages provided for by section 203.

24. Defendant, as to each member of the class, also failed in some or all of the

1 pay stubs furnished to Class Members, to provide the data required by section 226 of the
2 California Labor Code and that Defendant's failure to provide such data entitles Plaintiff
3 and each Class Member to either actual damages or statutory damages, whichever is
4 greater.

5 25. Defendant's failure to provide rest and meal breaks as required by sections
6 226.7 and 512 of the California Labor Code entitles Plaintiff and each Class Member to
7 at least one hour of pay for each workday he or she was not provided a rest and/or meal
8 break.

9 26. The number of Class Members is great, believed to be in excess of three
10 hundred persons, but fewer than two-thousand persons. It therefore is impractical to join
11 each Class Member as a named Plaintiff. Accordingly, utilization of a class action is the
12 most economically feasible means of determining the merits of this litigation.

13 27. Despite the size of the proposed class, the Class Members are readily
14 ascertainable through an examination of the records that Defendant is required by law to
15 keep. Likewise, the dollar amount owed to each Class Member is readily ascertainable
16 by an examination of those same records.

17 28. Common questions of fact and of law predominate in the Class Member's
18 claims over individual issues regarding the money owed to each Class Member.

19 29. There is a well-defined community of interest in the questions of law and
20 fact common to the Class Members.

21 30. Plaintiff's claims are typical of the claims of the Class Members, which
22 claims all arise from the same general operative facts, namely, Defendant did not
23 compensate its employees as required by the California Labor Code and Defendant did
24 not furnish to the Class Members the information required by Section 226 of the Labor
25 Code. Plaintiff has no conflict of interest with the other Class Members and is able to
26 represent the Class Members' interests fairly and adequately.

27 31. A class action is a superior method for the fair and efficient adjudication of
28 this controversy. The persons within the Class are so numerous that joinder of all of

1 them is impracticable. The disposition of all claims of the members of the Class in a
2 class action, rather than in individual actions, benefits the parties and the Court. The
3 interest of the Class Members in controlling the prosecution of separate claims against
4 Defendant is small when compared with the efficiency of a class action.

5 **FLSA COLLECTIVE-ACTION ALLEGATIONS**

6 32. Plaintiff seeks to represent all natural persons who were tendered paychecks
7 by Defendant during the three years preceding the filing of this Complaint and not paid in
8 accordance with the provisions of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §
9 201 *et seq.* (All persons described in paragraph 32 herein shall be referred to as
10 “Collective-Action Members.”)

11 33. Plaintiff is similarly situated to the Collective-Action Members in that
12 Plaintiff and the Collective-Action Members were employed by Defendant and in that
13 Defendant did not pay Plaintiff and the Collective-Action Members their minimum wages
14 or overtime compensation by the next regularly scheduled payday.

15 34. This action is maintainable as an “opt-in” collective action pursuant to 29
16 U.S.C. § 216(b).

17 35. All Collective-Action Members should be given notice and be allowed to
18 give their consent in writing to participate in—in other words, to opt into—the collective
19 action pursuant to 29 U.S.C. § 216(b).

20 **FIRST CLAIM FOR RELIEF**

21 (Cal. Lab. Code §§ 510 and 1194, Failure to Pay Overtime)

22 36. Plaintiff repleads, realleges, and incorporates by reference each and every
23 allegation set forth in the Complaint.

24 37. Defendant, by failing to pay Plaintiff and the Class Members their overtime,
25 has violated section 510 of the California Labor Code. Plaintiff and the Class Members
26 are, accordingly, entitled to recovery of the unpaid balance of the full amount of their
27 overtime compensation, including interest thereon, reasonable attorneys’ fees and costs of
28 suit, in accordance with section 1194(a) of the California Labor Code.

SECOND CLAIM FOR RELIEF

(Cal. Lab. Code § 203, Continuing Wages)

38. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in the Complaint.

39. Plaintiff was discharged on or about June 29, 2007, but was not provided his wages within the time provided by section 201 of the California Labor Code, despite Defendant's knowledge of its obligation to do so. Defendant's actions were "willful" within the meaning of section 203 of the California Labor Code.

40. Plaintiff and each Class Member who was discharged or quit, are therefore entitled to continuing wages from the date on which his or her final wages were due until the date on which Defendant makes payment of the wages, not to exceed thirty days.

THIRD CLAIM FOR RELIEF

(Cal. Lab. Code § 226, Failure to Provide Accurate Pay Stubs)

41. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in the Complaint.

42. Defendant employed Plaintiff and the Class Members but failed to provide them with the data required by section 226 of the California Labor Code. Specifically, Defendant failed to provide the following information under California Labor Code section 226: pay stub fails to detail gross wages earned, total hours worked by the employee, net wages earned, or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code § 226.

43. Accordingly, Plaintiff and each Class Member are entitled to damages, and Plaintiff is entitled to costs and attorney's fees, demand for which is hereby made in accord with the provisions of California Labor Code § 226(e).

FOURTH CLAIM FOR RELIEF

(Cal. Lab. Code § 226.7, Failure to Provide Rest and Meal Breaks)

44. Plaintiffs replead, reallege, and incorporate by reference each and every

1 allegation set forth in the Complaint.

2 45. During the Class Period, Plaintiff and the Class Members were not provided
3 time to take ten-minute rest periods during their work shifts.

4 46. During the Class Period, Plaintiff and the Class Members were not provided
5 time to take non-working thirty-minute meal breaks during their work shifts.

6 47. Accordingly, Plaintiff and each Class Member are entitled to compensation
7 of at least one hour of pay for each workday during which he or she was not provided the
8 proper ten-minute rest period. Likewise, each Class Member is entitled to compensation
9 of at least one hour of pay for each workday during which he or she was not provided the
10 proper rest and/or meal break.

11 **FIFTH CLAIM FOR RELIEF**

12 (Request for Restitution and Injunctive Relief for Illegal Business Practices, Cal. Bus. &
13 Prof. Code § 17200 *et seq.*)

14 48. Plaintiff repleads, realleges, and incorporates by reference each and every
15 allegation set forth in the Complaint.

16 49. Plaintiff is suing both in his individual capacity and on behalf of the general
17 public, and he is a proper representative Plaintiff because he has suffered direct harm
18 from the illegal business practices herein alleged.

19 50. Beginning at an exact date unknown to Plaintiff, Defendant has committed
20 acts of unfair business practice as defined in California Business and Professions Code
21 section 17200 *et seq.* by engaging in the following acts and practices: (1) failing to
22 provide overtime compensations to its employees in accordance with section 510 of the
23 California Labor Code; (2) failing to pay its discharged employees in accordance with
24 sections 201, 202, and 203 of the California Labor Code; (3) failing to provide rest and
25 meal breaks to its employees in accordance with sections 226.7 and 512 of the California
26 Labor Code; (4) providing pay stubs that do not include the data required by section 226
27 of the California Labor Code; (5) violating provisions of the applicable Wage Order; (6)
28 violating the Fair Labor Standards Act; and (7) violating the Code of Federal

1 Regulations.

2 51. The acts and practices as described in the paragraph above violate Business
3 and Professions Code section 17200 *et seq.* in the following respects:

- 4 (a) Defendant's policy and practice of failing to pay its employees minimum
5 wage and overtime compensation violates sections 510 and 1194 of the
6 California Labor Code and the Fair Labor Standards Act, and, consequently,
7 constitutes an unlawful business act or practice within the meaning of
8 Business and Professions Code section 17200 *et seq.*;
- 9 (b) Defendant's policy and practice of failing to pay its discharged or quitting
10 employees at the times mandated by sections 201 and 202 of the California
11 Labor Code constitutes an unlawful business act or practice within the
12 meaning of Business and Professions Code section 17200 *et seq.*;
- 13 (c) Defendant's policy and practice of failing to provide its employees with rest
14 and meal periods violates sections 226.7 and 512 of the California Labor
15 Code and, consequently, constitutes an unlawful business act or practice
16 within the meaning of Business and Professions Code section 17200 *et seq.*;
- 17 (d) Defendant's policy and practice of failing to provide certain pay-stub data
18 violates section 226 of the California Labor Code and, consequently,
19 constitutes an unlawful business act or practice within the meaning of
20 Business and Professions Code section 17200 *et seq.*;
- 21 (e) Defendant's violation of the Fair Labor Standards Act is in contravention of
22 federal law and, consequently, constitutes an unlawful business act or
23 practice within the meaning of Business and Professions Code section 17200
24 *et seq.*
- 25 (f) Defendant's violation of the applicable Wage Order is in contravention of
26 state law and, consequently, constitutes an unlawful business act or practice
27 within the meaning of Business and Professions Code section 17200 *et seq.*;
28 and

(g) Defendant's policy and practice of failing to pay its employees the local going-wage rate in accordance with its contracts with the United States Government violates federal law and, consequently, constitutes an unlawful business act or practice within the meaning of Business and Professions Code section 17200 *et seq.*

52. Under section 17200 *et seq.* of the Business and Professions Code, this Court is authorized to enter such judgment or order as may be necessary to restore to any person in interest the money or property acquired by Defendant through its unlawful and unfair business practices.

53. Plaintiff and the Class Members are, therefore, entitled to a judgment of this Court requiring Defendant to pay to Plaintiff and each identifiable Class Member the unpaid overtime compensation, continuing wages, and/or one hour of additional compensation for each missed rest and meal period, to which such individuals were and are entitled but which have been denied them by reason of Defendant's conduct alleged herein.

54. In other words, Plaintiff and the Class Members are entitled to restitution of their unpaid overtime compensation, continuing wages, one hour of additional compensation for each missed rest and meal period improperly withheld by Defendant, and the money unlawfully withheld by Defendant when failing to pay its employees the local going-wage rate, as such funds should be distributed to the individuals who are rightfully entitled to such monies.

55. The named Plaintiff is a proper person to bring this litigation as a "representative action" to compel restitution. The named Plaintiff is a person who has suffered damage as a result of the unlawful actions of Defendant herein alleged. The actions of Defendant herein alleged are in violation of various statutes and in contravention of established public policy, and, accordingly, a court order compelling it to cease and desist from such actions and to make restitution is a vindication of an important public right. The extent to which Defendant has been unjustly enriched as a

1 result of its unlawful and unfair business practices is a matter that can be ascertained by
2 examination of the payroll and accounting records that Defendant is required by law to
3 keep and maintain and that Defendant has kept and maintained.

4 56. The identity of the persons to whom restitution should be made is a matter
5 that can be ascertained from those records that Defendant is required by law to keep and
6 maintain and that it has kept and maintained.

7 57. Plaintiff's efforts in securing the requested relief will result "in the
8 enforcement of an important right affecting the public interest," as "a significant benefit,
9 whether pecuniary or nonpecuniary, [will] be[] conferred on . . . a large class of persons."
10 Cal. Civ. Proc. Code § 1021.5. Moreover, because "the necessity and financial burden of
11 private enforcement . . . are such as to make [an attorney's fee] award appropriate, and
12 [because attorney's] fees should not in the interest of justice be paid out of the recovery,
13 if any," *id.*, Plaintiff requests that the Court also award reasonable attorney's fees
14 pursuant to the provisions of section 1021.5 of the California Code of Civil Procedure.

15 58. Plaintiff and the Class Members have no plain, speedy, or adequate remedy
16 at law, inasmuch as Defendant, unless enjoined by an order of this Court, will continue to
17 violate systematically the provisions of sections 201, 202, 203, 204, 226, 226.7, 510, 512,
18 and 1194 of the California Labor Code, the applicable Wage Order, the Fair Labor
19 Standards Act and the Code of Federal Regulations.

20 59. Accordingly, injunctive relief is proper and necessary pursuant to section
21 17203 of the California Business and Professions Code.

22 60. Pursuant to section 17205, the remedies and penalties provided by section
23 17200 *et seq.* are cumulative to the remedies and penalties available under all other laws
24 of this state.

25 **SIXTH CLAIM FOR RELIEF**
26 (29 U.S.C. § 206, Minimum Wage)

27 61. Plaintiff repleads, realleges, and incorporates by reference each and every
28 allegation set forth in the Complaint.

62. At all times relevant herein, 29 U.S.C. § 203 (d) of the Fair Labor Standards

1 Act defined employer as “any person acting directly or indirectly in the interest of an
2 employer in relation to an employee.” Upon information and belief, Defendant operates
3 an enterprise engaged in commerce within the meaning of the FLSA. Defendant is an
4 employer or one acting in the interest of an employer.

5 63. Defendant, by not paying Plaintiff and the Collective-Action Members all
6 wages owing by the next regularly scheduled payday, has violated the Fair Labor
7 Standards Act by failing to provide at least minimum wages to Plaintiffs and the Class
8 Members as required by 29 U.S.C. § 206. Defendant’s failure to pay Plaintiffs and the
9 Collective-Action Members the proper wages required by law was willful. Accordingly,
10 Plaintiffs and the Class Members are entitled to be paid liquidated damages, attorney’s
11 fees and costs, according to proof, in accordance with 29 U.S.C. § 216 (b).

12 **SEVENTH CLAIM FOR RELIEF**

13 (29 U.S.C. § 207, Overtime)

14 64. Plaintiff repleads, realleges, and incorporates by reference each and every
15 allegation set forth in the Complaint.

16 65. Defendant, by not paying Plaintiff and the Collective-Action Members the
17 overtime wages due and owing to them, have violated the Fair Labor Standards Act, 29
18 U.S.C. § 207. Accordingly, Plaintiff and the Collective-Action Members are entitled to
19 be paid the balance of their unpaid overtime wages, liquidated damages, attorneys’ fees,
20 and costs, according to proof, in accordance with 29 U.S.C. § 216(b).

21 **EIGHTH CLAIM FOR RELIEF**

22 (Cal. Lab. Code § 2699, Civil Penalties under Lab. Code Private Attorneys General Act)

23 66. Plaintiff repleads, realleges and incorporates by reference each and every
24 allegation set forth in the Complaint.

25 67. Pursuant to California Labor Code section 2699.3(a)(1), on or about August
26 31, 2007, Plaintiff Konstantinos Moshogiannis gave written notice by certified mail to the
27 Labor and Workforce Development Agency (“LWDA”) and Defendant USProtect
28 Corporation, through its registered agent for process of service, CT Corporation System,

1 of the specific provisions of the California Labor Code alleged to have been violated,
2 including the facts and theories specified in the original complaint filed July 26, 2007.

3 68. At all relevant times herein, California Labor Code section 2699.3(a)(2)(A)
4 provided:

5 The agency shall notify the employer and the aggrieved employee or
6 representative by certified mail that it does not intend to investigate the
7 alleged violation within 30 calendar days of the postmark date of the notice
8 received pursuant to paragraph (1). Upon receipt of that notice or if no
9 notice is provided within 33 calendar days of the postmark date of the notice
10 given pursuant to paragraph (1), the aggrieved employee may commence a
11 civil action pursuant to Section 2699.

12 Cal. Lab. Code § 2699.3(a)(2)(A). More than thirty-three calendar days has passed since
13 the postmark date of the notice sent to the LWDA on or about August 31, 2007, and no
14 notice has been received by the LWDA that it does not intend to investigate.

15 Accordingly, Plaintiff “may as a matter of right amend [the] existing complaint to add a
16 cause of action arising under this part within 60 days of the time periods specified in this
17 part.” Cal. Lab. Code § 2699.3(a)(2)(C).

18 69. Section 210 of the California Labor Code provides for civil penalties for
19 each violation of section 204. Section 558 of the California Labor Code provides for
20 civil penalties for each violation of sections 510 and 512. Section 226.3 of the California
21 Labor Code provides for civil penalties for each violation of section 226 (a). Section
22 1197.1 provides for civil penalties for each violation of section 1194. Section 2699(f) of
23 the California Labor Code provides for civil penalties for violations of the California
24 Labor Code, for which a specific civil penalty is not provided, which here includes, *inter*
25 *alia*, sections 201, 202, and 226.7. Section 2699(a) provides that civil penalties may be
26 “recovered through a civil action brought by an aggrieved employee on behalf of himself
27 or herself and other current or former employees.” Section 2699(g) provides that an
28 employee who prevails in a civil action under section 2699 shall be entitled to an award

1 of reasonable attorneys' fees and costs.

2 70. The State of California and Plaintiff are, therefore, entitled to civil penalties,
3 attorneys' fees, and costs according to proof.

4 **WHEREFORE**, Plaintiff prays judgment as follows:

5 1. That this Court certify the Class and the Collective Action described in this
6 Complaint.

7 2. That, with respect to the First Cause of Action, this Court enter judgment in
8 favor of Plaintiff and the Class Members for payment of their unpaid overtime
9 compensation, interest thereon, reasonable attorneys' fees and costs of suit, according to
10 proof, in accordance with section 1194(a) of the California Labor Code.

11 3. That, with respect to the Second Cause of Action, it be adjudged that the
12 failure of Defendant to make payment of wages within the time prescribed by sections
13 201 and/or 202 of the California Labor Code was "willful" within the meaning of section
14 203 of the California Labor Code and that this Court award Plaintiff and Class Members
15 continuing wages according to proof.

16 4. That, with respect to the Third Cause of Action, this Court enter judgment in
17 favor of Plaintiff and Class Members for damages, reasonable attorney's fees, and costs
18 of suit, each according to proof, in accordance with section 226(e) of the California Labor
19 Code.

20 5. That, with respect to the Fourth Cause of Action, Plaintiff and Class
21 Members be awarded judgment, interest, and costs, according to proof.

22 6. That, under the Fifth Cause of Action, it be adjudged that Defendant's
23 violations of sections 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194 of the
24 California Labor Code, violated section 17200 *et seq.* of the California Business and
25 Professions Code. Accordingly, Plaintiff requests that the Court order Defendant to pay
26 restitution to Members of the Plaintiff Classes, with interest, in the form of the overtime
27 compensation, wages, continuing wages unlawfully retained by Defendant, meal-and-rest
28 break wages unlawfully withheld by Defendant, and the money unlawfully withheld by

1 Defendant when it failed to pay its employees the local going-wage rate. Furthermore,
2 Plaintiff requests that the Court issue an order or decree pursuant to section 17203 of the
3 California Business and Professions Code that permanently enjoins Defendant from
4 pursuing its practice of violating sections 201, 202, 203, 204, 226, 226.7, 510, 512, and
5 1194 of the California Labor Code. Finally, Plaintiff requests that the Court award
6 Plaintiff his reasonable attorney's fees and costs incurred in the prosecution of the Fourth
7 Cause of Action pursuant to section 1021.5 of the California Code of Civil Procedure.

8 7. That, with respect to the Sixth Cause of Action, this Court enter judgment in
9 favor of Plaintiff and the Collective-Action Members and declare that Defendant violated
10 the FLSA, declare that Defendant's violations were willful, award damages for their
11 unpaid wages as required by the FLSA, as well as liquidated damages according to proof,
12 reasonable attorney's fees, and costs of suit, including expert witness expenses, in
13 accordance with 29 U.S.C. § 216(b).

14 8. That, with respect to the Seventh Cause of Action, this Court enter judgment
15 in favor of Plaintiff and the Collective-Action Members and declare that Defendant
16 violated the FLSA, declare that Defendant's violations were willful, award damages for
17 their unpaid overtime compensation as required by the FLSA, as well as liquidated
18 damages according to proof, reasonable attorney's fees, and costs of suit, including
19 expert witness expenses, in accordance with 29 U.S.C. § 216(b).

20 9. With respect to the Eighth Cause of Action, that it be adjudged that the State
21 of California and Plaintiff be awarded their civil penalties, attorneys' fees and costs,
22 according to proof and pursuant to California Labor Code sections 2699, 210, 226.3, 558,
23 and 1197.1

24 10. For such further relief as the Court may order.
25 Plaintiff demands a trial by jury as to all counts.

26 DATED: November 7, 2007

HARRIS & RUBLE:

27
28 /s/ Alan Harris

Alan Harris
Attorney for Plaintiff

DATED: November 7, 2007

SCOTT + SCOTT, LLC:

/s/ Arthur L. Shingler
Arthur L. Shingler, III
Attorney for Plaintiff

PROOF OF SERVICE

I am an attorney for Plaintiff herein, over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 5455 Wilshire Boulevard, Suite 1800, Los Angeles, California 90036. On November 7, 2007, I served the within documents: **FIRST AMENDED COMPLAINT**

I served the above document(s) via United States District Court Electronic Filing Service as set for the below:

Steven R. Blackburn
Matthew A. Goodin
Epstein Becker & Green, P.C.
One California Street, 26th Floor
San Francisco, CA 94111-5427

I declare under penalty of perjury that the above is true and correct. Executed on November 7, 2007, at Los Angeles, California.

/s/ Abigail Treanor
Abigail Treanor